

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

— APPEAL FROM ORDER NO.724 OF 2005

Shri Upendra Kantilal Thanawala & ors.Appellants

VS

Smt Gunvanti Prabhulal Thanawala & ors.Respondents

Mr.P.K.Dhakephalkar with Mr Ramesh Karale for
Appellants

Mr.A.Y.Sakhare, Sr.Counsel with Ms Gauri Godse
for Respondents

CORAM : B.H.MARLAPALLE, J

DATE: 23rd September, 2005

P.C.

1. Heard Mr. Dhakephalkar learned counsel for the appellants/plaintiffs and Mr A.Y.Sakhare senior counsel with Ms Gauri Godse for the respondents-defendants.

2. This appeal arises from an order dated 10th March 2005 passed by the Civil Judge, Senior Division, Thane whereby the application at Exhibit 5 filed for temporary injunction has been rejected and order of status quo granted on 10th March 2005 came to be rejected.

3. The plaintiffs have filed Special Civil Suit No.119 of 2005 for a declaration and injunction in respect of the suit property namely a compact piece of land totally admeasuring 13,723 sq.meters located in city survey No.371, 373 to 409 with various structures of chawls, buildings, sheds, and a bungalow consisting thereon. The said property had come to the exclusive ownership of Govindlal Thanawalla and subsequently to his 3 sons namely Kantilal, Prabhulal and Madhukant. It is not disputed that the plaintiff's claim 2/3rd share (share of Kantilal and Madhukant) and the defendants claim 1/3rd share (share of Prabhulal). By way of interim relief the plaintiff had prayed for restraining orders against the defendants from carrying out any repairs, construction, renovation on the suit property or any alterations, modifications, changes thereunder or any other

structure in the suit premises and dispossessing the plaintiff no. 9 from the suit premises. The learned Judge of the trial court by the impugned order held that the plaintiffs could not make out any prima facie case and balance of convenience was in favour of the defendants. It is also not disputed that the plaintiff no. 9 a partnership firm has acquired developments rights from the plaintiffs nos. 1 to 8 in respect of the 2/3rd share in the suit property. The suit property has not been clearly demarcated as yet so as to identify the 2/3rd share of the plaintiff nos. 1 to 8 and 1/3rd share of the defendants and this could be a case for the alleged acts of the defendants in interfering with the proposed development. The suit is pending and the issues raised by the respective parties could be adjudicated therein. In the written statement filed by the defendants it was stated that they have started at their expenses repairs to the walls, waterproffing of the terrace and plastering etc of the bungalow so as to avoid any further damage to the said structure. In the said written statement they gave a declaration in the following words :

" These defendants wish to put on record that there is no structural additions, alterations or modification in the suit premises. Certain windows and the doors of the bathroom which have been extensively damaged by monsoon water and weathening effect are being replaced. Certain water pipe lines in the bathrooms are being replaced as they have either been clogged or leaked. The defendants have no intention to relocating any of the rooms, bathrooms, toilets, passages, entrances, staircases etc for which a permission from the authorities such as Municipal Corporation is required. These defendants also put on the records of this court that they are not erecting any temporary structures garden or recreation facilities or any other facilities on the suit property. Unless and until such repairs are being immediately carried out in the bungalow, there are all the possibilities that a major mishap or accident may take place and the lives of these defendants and their family members are at stake. Also, if immediately repairs as above are not carried there are all the possibilities that the bungalow may get structurally damaged and ultimately collapse. To avoid any such tragedy happen, this Court should immediately vacate the ad interim stay order granted to the plaintiffs."

4. On the basis of the said declaration made by the defendants there is no reason to restrain them from carrying out the repairs, replacement of pipes, tiles and repairs to the roof etc with a specific understanding that the defendants would not put up any additional structure or raise the height of any of the existing structures during the pendency of the suit. None of the parties shall

create any third party interest in the suit property without leave of the trial court.

5. Appeal therefore stands disposed of in terms of the undertaking furnished by the advocates. The defendants be permitted to carry out the repairs etc. In addition, it is directed that no third party interest shall be created by any of the parties without leave of the trial court, during the pendency of the suit.

(B.H.Marlapalle, J)